

Consolidation of Comparative Child Welfare Legislation

Overview of Key Findings



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Consolidation of Legislation Reviews

Introduction:

An important task in reviewing Alberta's *Child Welfare Act* is for us to look at similar legislation in other jurisdictions across Canada and around the world. This provides us with a broad knowledge base about how child welfare services are structured elsewhere, and suggests possible directions for improvements to our legislation and service delivery systems.

This summary consolidation is based on a first level review of Child Welfare legislation from across Canada, the United States, United Kingdom, Europe, New Zealand, and Australia. The information was compiled from direct reviews of legislation and from the literature. This initial review should not to be considered as representing the whole of Child Welfare legislation/policy/practice in these jurisdictions, however it does provide a broad overall picture.

The structure of this document follows that of the Discussion Guide. Each section provides a brief summary of current provisions in Alberta's *Child Welfare Act* as well as a summary of the findings from other jurisdictions.

Children in Need of Protective Services

Definition of "Child in Need of Protection"

Alberta (Current):

The Alberta *Child Welfare Act* defines a child in need of protection as a child whose 'survival, security, or development' is endangered because of one or more of a list of protection concerns. These concerns include:

- > Child who is abandoned, lost, or has no guardian
- > Failure to provide the necessities of life (ie. neglect)
- > Physical, sexual, or emotional injury or substantial risk of same
- > Cruel or unusual treatment of the child
- > Child whose condition or behaviour prevents the guardian from provide adequate care to meet the child's needs

All persons who have reasonable and probably grounds to believe that a child is in need of protection must report the matter to a director¹.

When the director receives such a report, and unless there are not reasonable and probable grounds to believe the child may need protective services, he must investigate the report. If the investigation finds that the child needs protective services, the director must take whatever steps are appropriate under the *Child Welfare Act* to ensure that the child is safe. This decision is based on the principle of least intrusive measures.

The steps taken to ensure that the child is protected must involve the least invasion of the family's privacy that is adequate to protect the child. In some cases, this means that the family is referred to community-based services. In other cases, an agreement is signed or a court order obtained in order to provide services to the child and family. Services may be provided with the child remaining at home, or with the child being taken into care if he cannot safely remain with the family.

¹ A "director" means a person who has been delegated to provide services under the *Child Welfare Act*.

Findings: All jurisdictions include neglect and physical, sexual, and emotional abuse as part of their definition of child in need of protection. A number of other categories were also noted frequently:

- > Caregiver's refusal/inability to ensure the child attends school (NB, PEI, Quebec, Belgium, Colorado, Tasmania, South Australia, Australian Capital Territory)
- > Criminal activity by a child who is too young to be charged – usually including a statement about parent's refusal or inability to address the behaviour (NB, Saskatchewan, NWT, BC, New Zealand, Northern Territory, Newfoundland, Nova Scotia, Ontario)
- > Child out of parental control (NB, Denmark, Manitoba, UK, Northern Territory, Australian Capital Territory, Colorado, Finland, New Zealand, PEI, Nova Scotia, New South Wales, NWT, Wisconsin, BC, Yukon)

Some items that Alberta lists under emotional injury (and are only grounds for protection if there is substantial impairment to the child's functioning) are listed as grounds for protection in and of themselves:

- > Domestic violence (New Brunswick, Denmark, Saskatchewan, Prince Edward Island, Newfoundland, Nova Scotia)
- > Caregivers abuse alcohol/drugs (Denmark, Sweden)
- > Caregivers conduct endangers child's life, health, or well being (NB, Manitoba, Netherlands, Australian Capital Territory)

The requirement to report varies widely across jurisdictions:

- > Mandatory reporting (Newfoundland, US, Northern Territory, Finland, NB, PEI)
- > Voluntary reporting (New Zealand, Belgium, Netherlands)
- > Mandatory reporting for some categories of professionals (Australia)

Although the process varies widely, all jurisdictions identify that reports are to be followed up to assess the level of risk and to determine whether the child needs protective services and what kind of services would best meet the needs of the child/family.

Keeping Children Safe Within Their Families

Alberta (Current):

The *Child Welfare Act* provides the option of providing services to children in need of protection while they remain at home. This occurs when the child can be safe in the care of his family, with support services and monitoring in place. Services can be provided by way of Support Agreements or Supervision Orders. A wide range of services is available, including family support, parenting classes, individual or family counselling, and youth work. Services are chosen based on the specific needs of the child and family, and may be directed towards the parent(s), the child(ren), or the family as a whole.

Other provisions to avoid removing a child from his home include the option to appoint an emergency caregiver to stay with a child who was left alone, and the ability to obtain a 'no-contact' type of order under the *Protection Against Family Violence Act*.

Findings:

All jurisdictions have provisions to offer family services through agreements with families and cite that this is the most preferred mechanism for providing services.

Some European countries provide extensive voluntary family support services not only to children in need of protection but also to a broader population of children and families in need of supports.

Most jurisdictions specify the option to get court-ordered supervision of a child in the care of his guardian, including the provision of services to alleviate risk (*Canada, Belgium, UK, US, Australia, Netherlands*).

All jurisdictions offer a broad range of services that are tailored to meet the specific needs of the children and families served.

Many Canadian jurisdictions enable the director to place an

emergency caregiver in the home of a child left alone (*Ontario, PEI, Newfoundland, Manitoba, BC, Nova Scotia*).

Some Canadian jurisdictions can obtain a no-contact or similar order on behalf of a child in need of protection (*PEI, Manitoba, Newfoundland, BC, NB, Saskatchewan, Nova Scotia*).

A number of jurisdictions specify the use of day care and/or respite services as natural places in the community where families can receive assistance (*NWT, BC, Denmark, Sweden, Australia, PEI, Yukon, Manitoba, Nova Scotia, Finland*).

Children in Care

Alberta (Current):

The *Child Welfare Act* provides the option of taking children into care when they cannot safely remain with their families. Children may come into care either by agreement with their guardians or by court orders. This arrangement can be temporary or permanent. When a child is in temporary care, efforts are directed towards resolving the child protection concerns so that he can be safely returned home. If it becomes apparent that the child will not be able to return home within a reasonable time, the director must apply to the court for permanent guardianship of the child. This action must be taken if a child has been in care for two years and still cannot return home, though there is a provision to delay this for up to one year.

The *Child Welfare Act* describes the provision of Secure Treatment when a child has a mental or behavioural disorder; is a danger to himself and/or others; and if a period of confinement will alleviate the disorder.

Youth who have been in the permanent care of Child Welfare when they turn 18 may receive an extension of services up to age 20, to assist them in making the transition to adulthood and independence.

Findings:

Most jurisdictions provide the option for the guardian to sign an agreement for a child to come into care, while all jurisdictions have provisions for court-ordered temporary care.

Many jurisdictions have specific provisions to ensure that each child in care has a clear plan in place so that his needs are identified and addressed effectively:

- The plan must include activities to maintain ties with family, extended family, community, culture (*Ontario, BC, Nova Scotia, Saskatchewan, Denmark, US, Australia, Manitoba, NWT*)
- The plan must be reviewed by a committee in order to ensure that services and planning are appropriate (*Ontario, NWT, Saskatchewan, US, Sweden*)

- Mediation is emphasized in some jurisdictions, including the option to adjourn court matters to attempt to resolve issues through mediation (*Newfoundland, BC, Saskatchewan, Nova Scotia*).
- Family group conferencing is emphasized in some jurisdictions, sometimes including the requirement to have a conference before proceeding to court and/or the option to adjourn court matters to attempt to resolve issues through family conferencing (*New Zealand, Newfoundland, BC, South Australia*).

Secure Treatment is not commonly outlined in the legislation, and only a few Canadian jurisdictions refer to this type of intervention (*Ontario, Nova Scotia, PEI, NB*). Where Secure Treatment is mentioned, the criteria are similar to Alberta's, with some differences in the length of stay permitted.

In Ontario, a parent can apply for Secure Treatment on his child. A physician and the child can also apply if the child is over 16.

All jurisdictions have the provision for permanent out-of-home care.

Almost all North American jurisdictions specify time limits for children to be in temporary care before an application for permanent care is to be made.

Many North American jurisdictions specify different timelines based on the age of the child, with shorter timelines for younger children (*BC, Ontario, Manitoba, Nova Scotia, Yukon, Newfoundland, US*).

Where time limits are stated, all but a few (*NB, NWT, Saskatchewan*) are shorter than Alberta's present timelines.

All jurisdictions contain statements to the effect that an application for permanent care should only proceed if the child would continue to be at risk in the care of his guardian AND that this cannot be ameliorated in a reasonable time.

All jurisdictions emphasize the importance of permanence and

stability for children in care.

In two Canadian jurisdictions, youth aged 16+ can apply to terminate their permanent guardianship (*Nova Scotia, PEI*).

In many jurisdictions, placement priorities are specified:

- > **Extended family** (*BC, Nova Scotia, Newfoundland, Ontario, New Zealand, Denmark, UK, Australia, US*)
- > **Aboriginal community** (*BC, Ontario, New Zealand, Australia, Yukon, Saskatchewan, Nova Scotia, Northern Territory, US*)

Many jurisdictions allow permanent wards to receive extended services past the age of majority, normally because the young person is still in school, is mentally and/or physically disabled, or is still completing a transition to independence (*NB, PEI, Newfoundland, Manitoba, Saskatchewan, Nova Scotia, Finland, BC, Ontario, Quebec, Denmark, Yukon, Northwest Territories*).

Meeting the Needs of Aboriginal Children

Alberta (Current):

Aboriginal children and families are disproportionately represented among people receiving child protection services. In order to better meet the needs of these children and families, Alberta has emphasized efforts to meaningfully involve Aboriginal people and communities in all aspects of service delivery. At a broad level, the *Child and Family Services Authorities Act* requires Aboriginal communities to be involved as equal partners in the planning and delivery of services. At the case-specific level, the *Child Welfare Act* requires consultation with the child's First Nation before the director can apply for a court order when the child is deemed to be ordinarily resident on reserve. For children that are deemed to be ordinarily resident off reserve, the *Act* requires efforts to get the guardian's consent to Band consultation prior to an order being granted, but even without such consent, requires notification of the First Nation when a court order is granted. Policy further elaborates on the requirements for Band consultation for First Nations children, and consultation with other Aboriginal communities and/or organizations for Aboriginal children who do not have First Nations status. The *Act* requires that the child's familial, cultural, social, and religious heritage must be respected, supported, and maintained.

Findings:

A number of jurisdictions specify the requirement to notify Bands of court applications and/or the right of Bands to make representations in court hearings regarding their members (*NWT, Manitoba, BC, Saskatchewan, Nova Scotia, US, Australia*).

Many jurisdictions specify that cultural values, practices, language, and spirituality must be respected and considered in determining best interests (*NWT, Yukon, Newfoundland, BC, NB, Saskatchewan, Australia, US*).

Advocacy

Alberta (Current):

The *Child Welfare Act* creates the Office of the Children's Advocate, which is mandated to receive and investigate complaints by children in care. The Children's Advocate is also responsible to advise the Minister on services provided under the Act, prepare an Annual Report, and provide assistance/advice to an Appeal Panel or Court when required.

Findings:

Most jurisdictions have a similar advocacy function, with a number of key roles identified:

- > Case advocacy (*Manitoba, BC, Saskatchewan – covers children receiving services from any government department, New Zealand, Australian Capital Territory*)
- > Represent children's rights, interests and viewpoints – unclear if this is broad or in relation to particular cases (*Manitoba, Quebec, BC, Saskatchewan*)
- > Advise the Minister (*Ontario, Manitoba, BC, Saskatchewan*)
- > Annual Report (*NWT, Yukon, Newfoundland – every 2 years, Manitoba, Nova Scotia, New Zealand*)
- > Carry out studies and research on potential service improvements (*Quebec, Saskatchewan, New Zealand*).

Legislation in the United States emphasizes the importance of volunteer advocates in supporting families.

In the United States, legislation mandates that a multi-disciplinary task force including community representation must review child protection practice every three years, and that the government must act on the recommendations (*US*).

Appeals

Alberta (Current):

Children and guardians may appeal any Court decision within 30 days. The *Act* also creates a citizens' Appeal Panel that hears appeals from children and families about decisions made by the director. The *Act* outlines specific categories of people who can appeal decisions, as well as specific decisions that can be appealed.

Findings:

All jurisdictions offer the option to appeal Court decisions.

Many jurisdictions have internal and/or community review panels or other processes through which children and families can appeal decisions other than Court decisions (*BC, PEI, Ontario, Saskatchewan, US, Denmark, Netherlands, Sweden, Queensland*).

Confidentiality

Alberta (Current):

Generally, identifying information may not be disclosed without the consent of the child and/or guardian. The *Act* does outline particular circumstances and categories of people with whom information may be shared. Information may be disclosed where required for the protection of the child or as needed between people providing services to the child and family.

The identity of a person who reported child protection concerns to the director may not be disclosed without Ministerial consent.

Findings:

Generally, legislation states that disclosure of identifying information is not permitted without the consent of the child and/or guardian, except to particular categories of people.

Most legislation protects the identity of a person who reported child protection concerns.

Adoptions

Alberta (Current):

The *Child Welfare Act* outlines requirements to adopt children, including children who are relinquished by their birth parents and those who are in permanent care.

The legislation outlines several provisions related to the adoption of Aboriginal children. If a guardian is relinquishing a child and is ordinarily resident on reserve, consultation with the Band must occur. If the guardian is not ordinarily resident on reserve, the guardian must consent to consultation. For adoptions of permanent wards, consultation with relevant Aboriginal communities/organizations is required, including a directive that Bands must consent to the adoption of First Nations children. Adopting parents must take reasonable steps to inform the child of his Indian status and to exercise his rights.

The Act describes how adoption information may be shared. Alberta has an adoption registry that allows parties to an adoption (eg. birth family, adoptee, adoptive family) to receive non-identifying information about one another. When two parties register and consent to the sharing of identifying information, the registry will release this information. Adoption agencies may be licensed to perform certain functions such as placing children for adoption and adoption searches.

Legislation sets out a process/requirements for adoption of children from outside the province/country. Adoption orders from other jurisdictions have the same effect as if they were made here.

Findings:

Some jurisdictions have set out a process to formally recognize Aboriginal custom adoptions (*NWT, BC, Northern Territory*).

A number of jurisdictions have legislated requirements for consultation with Bands/Aboriginal organizations prior to

proceeding with an adoption (*Ontario, Nova Scotia, NWT, BC*).

All jurisdictions permit disclosure of non-identifying information to people who are parties to an adoption.

None of the jurisdictions permits disclosure of identifying information without the consent of both parties, unless there are exceptional circumstances:

- > To protect health/safety of a person (*NWT, PEI, Yukon, Manitoba, BC, Nova Scotia*)
- > To establish Aboriginal status (*NWT*)
- > To determine right to inheritance (*Yukon, NB, Nova Scotia*)

Most jurisdictions have passive adoption registries, though a few have provisions for active searches where both parties have not registered (*PEI, BC, NB*).

Most Canadian jurisdictions have a provision to license adoption agencies for placing children for adoption and/or assisting with adoption searches (*PEI, Manitoba, Quebec, BC, NB, Saskatchewan, Nova Scotia, Ontario*).

Most provinces state that adoptions from outside the jurisdiction have the same effect as an adoption from within (*Ontario, NB, NWT, PEI, Yukon, Manitoba, BC, Saskatchewan, Nova Scotia*).

Most provinces have adopted the Hague Convention on Intercountry Adoption (*NWT, PEI, Yukon, Manitoba, BC, NB, Saskatchewan, Nova Scotia, Western Australia*).

Services to Children with Disabilities

Alberta (Current):

The *Child Welfare Act* outlines the provision of services to children with disabilities. The legislation does not define 'disability' however the key eligibility criteria as defined in policy is that "a handicapped child is one who has been assessed by a medical/health professional as having a chronic physical disability or disorder and/or mental deficiency or disorder of organic cause". Services are provided through voluntary agreements with families.

The purpose of the Handicapped Children's Services program (HCS) is to assist families with some of the extraordinary demands that result from their child's disability. The guardian is responsible for planning and decision-making about services for their child as well as the costs normally associated with caring for a child. The HCS program assists families to identify their needs, provides information and referral to appropriate community resources, and determines the need for HCS financial benefits. A broad range of services is available, with most services being provided to enable families to maintain their children at home, although out of home placements are also available.

Findings:

The review of Child Welfare legislation in many jurisdictions did not reveal references to children with disabilities. In these jurisdictions, services to children with disabilities may be provided under other pieces of legislation and/or policy rather than in Child Welfare legislation.

Most jurisdictions used the term "special need" rather than "handicapped" or "disability".

Some Canadian jurisdictions have included children with emotional and/or behavioural problems in this category (*Ontario, Nova Scotia, New Brunswick*).

Generally, a broad range of services appears to be available, with specific services selected to meet the needs of the child and family, including in-home services (eg. counselling, training parents in behaviour management), out-of-home services (eg. respite and placement), and services directed towards the child (eg. preschool).

Other Issues/Ideas

Cultural Responsiveness to Albertan Communities

Alberta (Current): The Act requires that the child's familial, cultural, social, and religious heritage must be respected, supported, and maintained.

Findings: A number of jurisdictions specify that cultural values, practices, language, and spirituality must be respected and considered in determining best interests (*NWT, Yukon, Newfoundland, BC, NB, Saskatchewan, Australia*).

Licensing of Foster Homes/Group Homes

Alberta (Current): Legal requirements for licensing foster and group homes are not articulated in the *Child Welfare Act* but in the *Social Care Facilities Licensing Act*. Foster homes and group homes that care for four or more children must be licensed according to the specific criteria outlined in the legislation and regulations.

Findings: Nearly all jurisdictions noted some kind of process to license and/or approve facilities caring for children. It was often unclear as to whether the process and/or requirements were specified in legislation or in policy.

Private Guardianship

Alberta (Current):

An adult who has been caring for a child for at least six months may apply to the Court to get Private Guardianship of the child. This gives the person guardianship rights and responsibilities for the child. A person cannot apply for Private Guardianship if the child is under the Temporary Guardianship of Child Welfare, although the director may apply on behalf of the person if the child is under Permanent Guardianship Order.

Findings:

A number of jurisdictions have similar references to the court's option to order the child into the custody of a person other than the guardian.